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Before the
Federal Communications Commission
Washington, D.C. 20554

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DISTRICT OF COLUMBIA

MM Docket No. 94-29

In the Matter of

Amendment of Section 73.202(b) RM-8416
Table of Allotments,
FM Broadcast Stations
(Willows and Dunnigan,
California)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: October 11, 1995; Released: October 24, 1995

By the Chief, Allocations Branch:

1. We now address a *Notice of Proposed Rule Making* ("Notice"), 9 FCC Rcd 1802 (1994), filed by KIQS, Inc., the former licensee of Station KIQS-FM, now KQSC(FM), Channel 288A, Willows, California, proposing to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, 47 C.F.R. §73.202(b), to substitute Channel 288B1 for Channel 288A at Willows, to reallocate Channel 288B1 from Willows to Dunnigan, California, and to modify the license for Station KIQS-FM accordingly. In the *Notice*, we noted that an application to assign the license of KIQS-FM to Pacific Spanish Network, Inc. ("PSN") had been filed. PSN became the licensee of KIQS-FM on March 31, 1993, and it subsequently filed comments in this proceeding as successor-in-interest to KIQS, Inc. stating its intention to pursue the modification proposal initiated by KIQS, Inc. In addition to PSN, comments were filed by KZSA Broadcasting, Inc. ("KZSA"), River Cities Radio, LP ("River Cities"), Genesis Broadcasting and Tribune Broadcasting (jointly) ("Genesis/Tribune"), Fuller-Jeffrey Broadcasting Corp. of the Sacramento Valley ("FJB"), and Michael Robert Birdsill. PSN, Genesis/Tribune and Birdsill filed reply comments.¹

¹ In addition, PSN filed a motion to expedite based on certain operational difficulties attendant to co-location of KIGS (AM) and KIGS-FM (now KQSC(FM)), which were commonly owned prior to the acquisition of the FM station by PSN. The motion is opposed by KZRA and Secret Communications Limited Partnership, successor-in-interest to Genesis. However, in light of our action today, the motion to expedite is moot.

² *Notice* at 1802.

³ Birdsill claimed that favorable action on the proposed upgrade of KQSC would allow Channel 287C1 to be substituted for Channel 287C2 at Shingletown, and he requested that such an upgrade for KCFM be added to this proceeding. However, by letter dated June 23, 1994, from the Acting Chief, Allocations Branch, Birdsill was informed that a staff review indicated that Channel 287C1 cannot be allocated to Shingletown consistent with the minimum distance separation requirements of Section

2. PSN seeks to invoke the provisions of Section 1.420(i) of the "Commission's Rules, which permit the modification of a station's authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest. See *Modification of FM and TV Authorizations to Specify a New Community of License*, 4 FCC Rcd 4870 (1989), *recon. granted in part*, 5 FCC Rcd 7094 (1990) ("Change of Community"). In its comments, PSN reiterates the support offered for the proposal set forth in the *Notice*: reallocation of Channel 288B1 from Willows to Dunnigan is in the public interest as it will not deprive Willows of its sole transmission service; it will provide Dunnigan with its first local aural transmission service; and the proposed reallocation would enable Station KQSC to increase its service area from 993 square kilometers containing 10,475 persons to an area of 4,754 square kilometers containing 161,280 persons, an increase of 379 percent in areas served and an increase of 1440 percent in the population served.² PSN therefore asserts that this proposal will result in a preferential arrangement of allotments and a new service benefit to the communities involved.

3. Commenter Birdsill, permittee of Station KCFM(FM), Shingletown, California, supports this proposal because it will not only expand service to the lower Sacramento Valley area of northern California, but will also facilitate an upgrade of KCFM(FM) and an expansion of its service to the upper Sacramento Valley.³ The remaining commenters ("commenters in opposition"), licensees of area radio stations,⁴ oppose the reallocation of Channel 288B1 to Dunnigan, contending that such an action would not serve the public interest or the policy goals of the Commission's upgrade policy and allotment priorities.

OPPOSITIONS

4. *Dunnigan as a "Community" for Allotment Purposes.* Those opposing this proposal contend that Dunnigan does not qualify as a "community" for allotment purposes. In the *Notice*, it was observed that Dunnigan is not listed in the U.S. Census, which is ordinarily sufficient to demonstrate its status as a community for allotment purposes.⁵ In recognition of Commission precedent requiring sufficient information in such instances to demonstrate that a locality qualifies as a community for allotment purposes, the petitioner states that Dunnigan has identifiable boundaries and its own water and fire protection districts; contains approximately 700 residents; has its own zip code, post office and town hall; and has its own churches,

73.207(b)(1) of the Commission's Rules. Moreover, Birdsill was advised that his upgrade proposal for KCFM is not in conflict with the proposed reallocation of Channel 288B1 to Dunnigan, and therefore cannot be considered as a counterproposal in the context of this proceeding. Rather, his request is dependent on the deletion of Channel 288A at Willows. Thus, it was explained that it is Commission policy to decline to accept a rule making request that is dependent upon final action in the context of the proceeding in which the proposal is made, and that Birdsill's comments would be considered only to the extent that they support the instant proposal.

⁴ River Cities Broadcasting is the former licensee of Stations KSXX(FM) and KMYC(AM), Marysville, California. These stations are now licensed to Marysville Radio, Inc., successor in-interest to River Cities.

⁵ *Notice*, at 1802.

businesses and civic clubs. The petitioner also asserts that Dunnigan has a comprehensive General Plan currently being revised for future growth, development and expansion of the community. The petitioner also provides the declarations of an elected county official, an associate planner and the Chairman of the Dunnigan Community Advisory Council attesting to Dunnigan's status.

5. The commenters in opposition challenge the assertion that Dunnigan is a community for allotment purposes. They maintain that Dunnigan is not listed in census reports and has less than 1,000 people. These commenters further assert that Dunnigan does not have sufficient indicia of a community, alleging that it consists of only an "old town" containing several homes, a few commercial establishments, a town hall, post office, fire station and residential subdivision. They allege that Dunnigan has no local government,⁶ corporate boundaries, police department, parks and recreation areas, medical or health care services, local schools, civic clubs or service organizations. The commenters in opposition assert that there is, in fact, a moratorium on future residential development in Dunnigan. They state that the Dunnigan "master plan" was actually prepared by an agency of Yolo County, and reveals, among other things, that "Dunnigan lacks a focal point for the community." They further allege that the master plan has only been "conceptually approved" by a steering committee in 1992, and there is no evidence that the plan was ever formally accepted.⁷ In any event, the commenters in opposition maintain that Dunnigan is merely part of the Sacramento metropolitan area and not an appropriate community for the proposed reallocation.

6. In its reply pleading, PSN disputes the assertions of the commenters in opposition, noting that the local telephone book relied upon by some of them lists Dunnigan as a distinct community with a number of businesses and churches, a golf course, a fire department which provides first-alert medical services and an adult residential care facility. It maintains that there is a local civic group which works within the community, emergency medical care for residents, and numerous public buildings, including a post office, water district building and fire department. PSN therefore contends that despite the fact that Dunnigan is not a designated community for census purposes, the Commission will recognize a geographically identifiable population grouping as a community for allotment purposes.

7. *Discussion.* If a community is not incorporated or listed in census reports, the proponent for a channel allotment to that locality must show the place to be a geographically identifiable population grouping.⁸ While the proponent of the allotment need not show that the borders of the municipality are precisely ascertainable, it must show that the residents of the locality are commonly regarded as a distinct group. This can be demonstrated by "the testimony of local residents or by objective indications

of the existence of a common perception that a locality's populace constitutes a distinct 'geographical population grouping'."

8. Review of the record before us establishes the community status of Dunnigan under this test. Although not listed as a community in census reports, Dunnigan is listed in the 1995 *Rand McNally Commercial Atlas and Marketing Guide* and a map of California therein reflects Dunnigan's location. Dunnigan is not a small municipality on the fringe of an urban area and, therefore, this proceeding is distinguishable from other cases in which a petitioner attempts to establish the community status of a municipality on the fringe of an urban area.¹⁰ As is evident from PSN's submissions, Dunnigan has its own post office, zip code, fire department and water district building. The presence of a civic organization which works in the community, a town hall, fire department, water district, churches, recreational facilities and a general store and other businesses, a number of which have "Dunnigan" in their names, indicates that residents have a strong belief in the existence of a community. The existence of a plan for the future development of Dunnigan further evidences its status as a distinct geographical population grouping. When viewed together, these factors become sufficient evidence of the existence of a community.

9. The Commission has consistently held that the test for determining community status pursuant to Section 307(b) of the Communications Act of 1934, as amended,¹¹ is not a stringent one.¹² The Commission does not require a municipality to provide every municipal service in order to merit a finding of community status. Therefore, the fact that Yolo County provides some municipal services and is the aegis of a plan for Dunnigan's future does not inevitably lead to a conclusion that Dunnigan is not a community. Similarly, the absence of local government or formal corporate boundaries is not fatal to the petitioner's claims.¹³ Accordingly, we conclude that Dunnigan is an appropriate "community" for purposes of the proposed allotment.

10. *Propriety of Reallocation of Channel from Willows to Dunnigan.* The commenters in opposition additionally assert that the proposed reallocation is inconsistent with the Commission's policy on community of license changes because it will deprive Willows of its only full-time aural service and will result in the loss of 100 percent of the station's existing service area. In the *Notice*, it was observed that the proposed reallocation would provide Dunnigan with its first aural transmission service and enable KIOS-FM (now KQSC) to expand its service area. Nevertheless, we noted that, to accommodate this proposal, the petitioner proposes to relocate its transmitter site, which will result in a loss of existing reception service. Therefore, in addition to the data on service gains set forth in the petition for rule making, the petitioner was requested to provide information on the areas and population which will lose service, as

⁶ Because Dunnigan is unincorporated and has no town government, the commenters in opposition are "unclear what, if any, activities take place in the 'town hall'." See, e.g., Comments of KZSA at 7.

⁷ In this regard, River Cities notes that the plan referred to by petitioner reflects little more than a "wish list for the future" for Dunnigan by Yolo County, not any governmental agency of Dunnigan itself. Similarly, it notes that the elected official whose declaration was proffered by the petitioner is an official of the County, not Dunnigan. Comments of River City at 3.

⁸ See *Second Report and Order* in BC Docket No. 80-130 (Revision of FM Assignment Policies and Procedures), 90 FCC 2d 88, 101 (1982).

⁹ See *Beacon Broadcasting*, 2 FCC Rcd 3469, *aff'd* 2 FCC Rcd 7562 (1987) (emphasis in original).

¹⁰ See, e.g., *Memorandum Opinion and Order (Semora, North Carolina)*, 5 FCC Rcd 934 (1990) ("*Semora, North Carolina*").

¹¹ 47 U.S.C. §307(b).

¹² See, e.g., *Beacon Broadcasting*, *supra*.

¹³ See, e.g., *Semora, North Carolina*, 5 FCC Rcd at 935.

well as the total reception service available within the gain and loss areas, if the proposed reallocation of Channel 288B1 were adopted.

11. In its comments, PSN states that as a result of the contemplated change of community of license, no white or gray areas will be created in the proposed loss area. It asserts that every person residing within the proposed loss area will continue to receive at least nine aural reception services (excluding day-time only KIQS-AM, licensed to Willows) and over 76 percent of that population will continue to receive eleven services. PSN further alleges that two additional Class A channels are available within the proposed loss area that meet the minimum spacing criteria should an expression of interest be received.¹⁴ On the other hand, PSN states that establishment of a Class B1 facility at Dunnigan will provide that community with its first aural broadcast service, whereas no other FM channel of any class is available for allotment at Dunnigan. Further, PSN states that most of the gain area is rural and will benefit from the establishment of new service. It maintains that the proposed reallocation will result in a sixth service to 55 persons, a seventh service to 477 persons, an eighth service to 124 persons and a ninth service to 104 persons. Under these circumstances, PSN asserts that the proposed gain and loss areas are already well served under the Commission's definition of at least five services.

12. The commenters in opposition maintain that although the petitioner suggests that the instant proposal will result in a preferred arrangement of allotments, the disruption to existing service outweighs any theoretical gains. Specifically, they contend that while this proposal would result in an overall gain in population served, it will be at the expense of the station's entire existing service area for which even the prospect of a future allotment is an inadequate replacement. Moreover, they maintain that all of the gains will come in the already adequately served Sacramento area. They claim that the loss of existing service is exacerbated by the fact that Willows will be left with the signals of mostly distant AM stations that are generally of a lower technical quality and are of "questionable worth" to those interested in local news and public affairs programming.¹⁵ In this regard, the commenters in opposition argue that the disruption to existing service in Willows outweighs the quantitatively superior arrangements of allotments in terms of population served.¹⁶

13. The commenters in opposition also contend that the proposed relocation of KQSC (formerly KIQS-FM) from Willows to Dunnigan is little more than a thinly-veiled attempt to move service from an underserved rural area to a well-served urbanized area -- in this case, a "dubious" community within the Sacramento metropolitan statistical area ("MSA").¹⁷ They maintain that the significant increase of population that would be served if this proposal is implemented is a result of moving the station's service area toward the adjacent metropolitan center proximate to Sacramento. Thus, even assuming the Dunnigan is a community for allotment purposes, these commenters maintain that the Commission's policy to avoid "shifting service from an underserved rural to a well-served urban area"¹⁸ disfavors the proposed change of community of license.

14. PSN, in its reply pleading, asserts that the proposed reallocation is fully consistent with the Commission's policy with regard to community of license changes. It states that if its proposal were granted, there would be a remaining transmission service in Willows, KIQS(AM), as well as an FM channel available for application with the potential for superior service than the existing FM service at Willows. It therefore urges that the provision of a first transmission service for Dunnigan outweighs the need to maintain a second local service in at Willow in light of the numerous other signals received in those communities. PSN maintains that the allegation that Willows would not receive service from the proposed upgraded facility at Dunnigan, even if true, would not be a sufficient reason for denying this proposal.¹⁹ It further states that Willows is not an underserved area -- and is in fact better served than Dunnigan -- in that all persons residing within the proposed loss area will continue to receive at least nine aural services, with over 76 percent of those continuing to receive eleven services. It notes that Dunnigan is neither a suburb of nor adjacent to Sacramento, alleviating any concern about allowing an FM station from an underserved rural area to be moved to a suburb of an adjacent, overserved urban market. PSN states that rather than disfavored urban "move-in", its proposal constitutes the only means whereby the present Channel 288A facility can be upgraded to a Class B1.²⁰ In addition, PSN notes that the proposed reallocation will result in a more efficient use of the radio spectrum by permitting the upgrade of its facility.

¹⁴ In its reply pleading, PSN noted the filing of an FM application for Point Arena, California, which voids the potential of one allotment, Channel 272A, at Willows. Nevertheless, it states another channel remains available for an allotment at Willows that is superior to the currently licensed facility on Channel 288A.

¹⁵ See, e.g., Comments of KZRA at 2-3; Reply Comments of Genesis/Tribune at 3-6.

¹⁶ The commenters in opposition state that the instant proposal is analogous to the proposals rejected in *FM Table of Allotments (Ravenswood and Williamstown, West Virginia)*, 7 FCC Rcd 5116 (1992) and *FM Table of Allotments (Eatonton and Sandy Springs, Georgia)*, 6 FCC Rcd 6580 (1991) ("*Sandy Springs*"), in which the Commission rejected proposed reallocations that would result in, among other things, a 100 percent loss of existing service. See, e.g., Comments of KZRA at 3-5; Comments of River City at 3-4.

¹⁷ See, e.g., Comments of KZRA at 10-11; Comments of Genesis/Tribune at 2.

¹⁸ *Change of Community*, 5 FCC Rcd at 7096.

¹⁹ PSN refers to an engineering report which concludes that if the transmitter site for the Dunnigan facility were ultimately located north of the site hypothetically chosen for purposes of the petition for rule making, Willows (and southeastern Glenn County) would be within the station's 54 dBu protected contour.

²⁰ PSN contends that contrary to the claims of the commenters in opposition, this case is dissimilar to cases such as *Sandy Springs*. It states that in *Sandy Springs*, the Commission was faced with, among other things, a "simple Class A allotment case" that was transformed by a counterproposal into a downgrade of an FM station from a Class C to C1; the need to waive the minimum distance separation rules to accommodate the proposal; a proposed loss area of 400,000 people; a proposed new community (in another state) directly adjacent to a major city that was found to be interdependent on the larger metropolitan area; and a proposed transmitter site within the adjacent city. In contrast, PSN states that its proposal contains none of those factors and represents the only possibility of upgrading its facility.

15. *Discussion.* Having previously determined that Dunnigan is a community for allotment purposes, we now turn to the question of whether the community of license change proposal would result in a preferential arrangement of allotments pursuant to the Commission's change of community procedures.²¹ In determining whether a proposed reallocation represents a preferential arrangement of allotments, we compare the existing to the proposed arrangement of allotments using our FM allotment priorities.²² In making this analysis, we note that Dunnigan would receive a first local aural transmission service, which is priority three. On the other hand, Willows already has a local aural transmission service²³ and, therefore, does not trigger priority three. Rather, it falls under priority four, other public interest factors. Under this priority, retention of KQSC(FM) in Willows would constitute its first local night-time transmission service. In balancing the merits of these proposals, we find that the reallocation to Dunnigan should be made because it triggers the higher allotment priority of a first local transmission service.

16. When the areas and populations of Station KQSC's current and proposed service areas are compared, there would be a net service gain of nearly 150,800 people by granting the instant proposal (*i.e.*, 161,280 people served operating from Dunnigan minus the 10,475 people served from Willows). In addition, our concern about removal of Willows' only local night-time transmission service is ameliorated by the fact that that community will continue to receive at least five full-time reception services, and therefore, is considered to be a well-served area.²⁴ Dunnigan, however, is also well-served, and allotment of Channel 288B1 there will result in the provision of a sixth service to 55 persons, a seventh service to 477 persons, an eighth service to 124 persons and a ninth service to 104 persons. In contrast, the proposed loss area will be left with no fewer than nine aural reception services, with 76 percent of that loss area served by at least eleven radio stations. Finally in this regard, although Dunnigan is closer to Sacramento than Willows, we note that neither community is adjacent to or located in an urbanized area as defined by the Census Bureau. Although the commenters in opposition also challenge the proposal based on Dunnigan's inclusion within the Sacramento MSA, they have failed to allege an interrelationship between the two communities sufficient to demonstrate that our community of license change policy would be misapplied in this case.²⁵ Therefore, we are not persuaded by the commenters in opposition that either the disruption to existing service or Dunnigan's closer proximity to Sacramento than Willows requires denial of this proposal. We therefore believe that the substitution of Channel 288B1 for Channel 288A at Willows, the reallocation of Channel 288B1 from Willows to Dunnigan, California, and modification of the license for Station KQSC(FM) to specify Dunnigan as its community of license is in the public interest.

TECHNICAL STUDY

17. Channel 288B1 can be allotted to Dunnigan, California, consistent with the minimum distance separation requirements of Section 73.207(b)(1) of the Commission's Rules at the petitioner's specified site.²⁶ In accordance with Section 1.420(i) of the Commission's Rules, we will modify the license for Station KQSC(FM) to specify Channel 288B1, Dunnigan, California, as its community of license.

18. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r), and Section 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, **IT IS ORDERED**, That effective **December 8, 1995**, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, **IS AMENDED** with respect to the communities listed below, as follows:

Community	Channel No.
Willows, California	-----
Dunnigan, California	288B1

19. **IT IS FURTHER ORDERED**, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of Pacific Spanish Network, Inc. for Station KQSC(FM), Willows, California, **IS MODIFIED** to specify operation on Channel 288B1 in lieu of Channel 288A subject to the following conditions:

- (a) Within 90 days of the effective of this *Order*, the licensee shall submit to the Commission a minor change application for construction permit (FCC Form 301), specifying the new facility;
- (b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620 of the Rules; and
- (c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules.

20. Pursuant to Commission Rule Section 1.1104(1)(k) and (2)(k), any party seeking a change in community of license of an FM or television allotment or an upgrade of an existing FM allotment, if the request is granted, must submit a rule making fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, Pacific Spanish Network, Inc., the licensee of Station KQSC(FM), is required to submit a rule making fee in addition to the fee required for the applications to effect the facilities upgrade and change in community of license.

²¹ *Change of Community, supra.*

²² *Id.* The allotment priorities are: (1) first full-time aural service; (2) second full-time aural service; (3) first local service; and (4) other public interest factors. Co-equal weight is given to the second and third priorities. See *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982).

²³ We recognize that Willow's remaining local transmission service, Station KIQS, is a day-time only AM station. However, for purposes of Section 307(b) comparisons under the FM allotment priorities, this nevertheless constitutes a local trans-

smission service. See *Change of Community*, 5 FCC Rcd at 7097.

²⁴ See, e.g., *FM Table of Allotments (Douglas, Tifton and Unionville, Georgia)*, 10 FCC Rcd 7706, 7707 (1995).

²⁵ See, e.g., *Faye & Richard Tuck*, 3 FCC Rcd 5374 (1988). In fact, staff analysis of this proposal shows that the 70 dBu (city grade) contour from Channel 288B1 at Dunnigan does not cover any part of the Sacramento or nearby Yuba City urbanized areas.

²⁶ The coordinates for Channel 288B1 at Dunnigan are North Latitude 38-55-34 and West Longitude 121-54-10.

21. IT IS FURTHER ORDERED, that this proceeding IS TERMINATED.

22. For Further information concerning this proceeding, contact Alan E. Aronowitz, Mass Media Bureau, (202) 776-1653.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
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